

BellSouth Telecommunications, Inc.

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PUBLIC SERVICE
COMMISSION

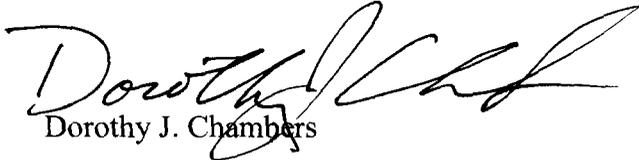
Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

Re: Adoption of Interconnection Agreement Provision Between BellSouth
Telecommunications, Inc. and Cinergy Communications Company by SouthEast
Telephone, Inc.
PSC 2004-00235

Dear Ms. O'Donnell:

Enclosed for filing in the above-captioned case is an original and ten (10) copies of
BellSouth Telecommunications, Inc.'s Objection to SouthEast Telephone's Notice of Intent to
Adopt Certain Provisions of An Interconnection Agreement.

Sincerely,


Dorothy J. Chambers

Enclosures

cc: Parties of Record

542058

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ADOPTION OF INTERCONNECTION)	
AGREEMENT PROVISION BETWEEN)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	
AND CINGERY COMMUNICATIONS)	
COMPANY BY SOUTHEAST TELEPHONE,)	CASE NO.
INC.)	2004-00235

**BELLSOUTH TELECOMMUNICATIONS, INC.'S OBJECTION TO
SOUTHEAST TELEPHONE'S NOTICE OF INTENT TO ADOPT CERTAIN
PROVISIONS OF AN INTERCONNECTION AGREEMENT**

BellSouth Telecommunications, Inc. ("BellSouth") hereby files its response objecting to the Notice of Intent (Notice) filed by SouthEast Telephone, Inc. ("SouthEast") wherein SouthEast requests, among other things, for the Kentucky Public Service Commission ("Commission") to issue an Order approving SouthEast's adoption of the Resolution of Disputes provision contained in the existing interconnection agreement between Cinergy Communications Company and BellSouth ("Cinergy ICA"). As explained below, because SouthEast is attempting to adopt a provision of the Cinergy ICA that has nothing to do with the provisioning of any interconnection service or network element, the requested adoption is inappropriate as it is outside the scope of Section 252(i) of the Telecommunications Act of 1996 (the "Act") and therefore should be denied.

Further, the existing interconnection agreement between SouthEast and BellSouth ("SouthEast ICA") provides that SouthEast should initially pursue any contract

amendment with BellSouth and if the parties are unable to reach agreement on an appropriate amendment, then either party make seek relief from the Commission. Given the terms of the SouthEast ICA, the Commission should deny the Notice as being premature and instruct SouthEast to comply with the applicable terms of the SouthEast ICA.

ARGUMENT

I. The Plain Language of Section 252(i) of the Act Limits a CLECs' Ability to "Pick and Choose" Portions of Existing Interconnection Agreement to Provisions Associated with Interconnection Services or Unbundled Network Elements. As such, SouthEast's Request to Adopt a Dispute Resolution Provision on an Existing Interconnection Agreement is Outside the Scope of Section 252(i) and Should be Denied.

A CLEC's ability to adopt other interconnection agreements ("ICAs") or to "pick and choose" portions of other ICAs is governed by Section 252(i) of the Act which provides in relevant part that "[a] local exchange carrier **shall make available any interconnection service, or network element** provided under an agreement approved under this section . . . to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement. *Id.* (emphasis added). Here, SouthEast is attempting, pursuant to 252(i), to adopt the Resolution of Disputes section of the Cinergy ICA. This provision is contained in the general terms and conditions section of the Cinergy ICA and, more importantly, this provision has nothing to do with the provision of any interconnection service or unbundled network element ("UNE").¹

Instead, when one compares SouthEast's current Resolution of Disputes provision with the Resolution of Disputes provision contained in the Cinergy ICA, it becomes clear

¹ Interconnection services are addressed in Attachment 3 of the Cinergy ICA. UNEs are addressed in Attachment 2 of the Cinergy ICA.

that SouthEast is attempting to adopt (or add) the following two sentences to its existing Resolution of Disputes provision:

For issues over which the Commission does not have authority, the Parties may avail themselves of any available legal remedies in the appropriate forum. Furthermore, the Parties agree to carry on their respective obligations under this Agreement, while any dispute resolution is pending.

Clearly the Commission has authority under Section 252 of the Act to resolve disputes regarding appropriate matters that are subject to “pick and choose” obligations, i.e. interconnection services and UNEs. Not surprisingly, the existing Resolution of Disputes provision of the SouthEast ICA provides in relevant part that “if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the aggrieved Party shall petition the Commission for a resolution of the dispute.”² Thus, from a practical perspective the Commission is already vested with the power to resolve relevant, i.e. Section 251 related ICA disputes, and therefore it is neither necessary nor wise to add dispute resolution language that addresses issues outside the scope of Section 251.

II. Under the ICA, SouthEast Should Approach BellSouth About the Possibility of Entering into an Appropriate ICA Amendment. As such, the Commission should Dismiss the Notice and Direct SouthEast to Abide by the Relevant Terms of the Existing ICA.

Adoption of interconnection agreements is specifically addressed in the SouthEast ICA.³ Accordingly, SouthEast should be required to comply with the parties’ ICA and pursue the viability of an Adoption Amendment with BellSouth prior to engaging the Commission. After discussing the matter with BellSouth, if SouthEast disagrees with

² SouthEast ICA, Section 12.

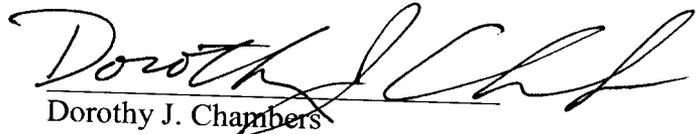
³ SouthEast ICA, Section 15.

BellSouth's position regarding any adoption issue, then SouthEast may petition this Commission to resolve the matter pursuant to the previously cited Resolution of Disputes provision that is contained in the SouthEast ICA. In addition to being consistent with the relevant terms of the ICA, this approach promotes Commission efficiency by keeping the Commission out of "policing" routine contract matters unless and until it is necessary to approve an agreed upon amendment or resolve a dispute.

CONCLUSION

For the reasons set forth herein, the Commission should deny SouthEast's Notice as outside the scope of Section 252(i) of the Act or dismiss the Notice without prejudice with instructions that SouthEast comply with the terms of its existing ICA and pursue any requested ICA amendment with BellSouth prior to engaging this Commission.

Respectfully submitted,



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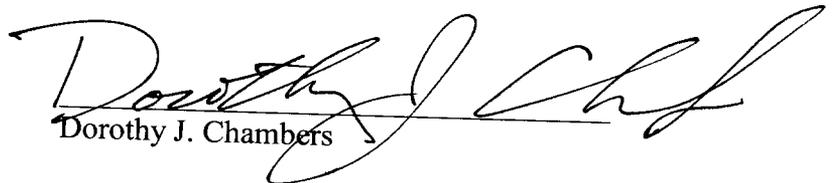
CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing was served on the following individuals by mailing a copy thereof, this 22nd day of June, 2004.

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